

12405

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHRISTIAN DAIGRE,

Plaintiff,

v.

MEL DAVIS, Chief of Police of the
Village of Robbins, in his individual
and official capacities, TYRONE WARD,
Mayor of the Village of Robbins, in his
individual and official capacities, JAMES E.
COFFEY, SR., Village of Robbins Trustee,
in his individual and official capacities,
DAVID BRYANT, Village of Robbins
Trustee, in his individual and official
capacities, ILA DAVIS, Village of Robbins
Trustee, in her individual and official
capacities, LENNY JOHNSON, Village of
Robbins Trustee, in his individual and
official capacities, SHANTIEL SIMON,
Village of Robbins Trustee, in his
individual and official capacities, and
CHANEL KELLY, Village of Robbins
Trustee, in her individual and official
capacities, ERNESTINE BECK-
FULGHAM, Village of Robbins
Administrator, in her individual and official
capacities, and the VILLAGE OF ROBINS,
ILLINOIS,

Defendants.

Case No.: 14 CV 1980

Judge: Elaine Bucklo

Mag. Judge: Sheila Finnegan

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION TO STRIKE OR FOR LEAVE TO FILE SUR-RESPONSE
TO DEFENDANTS' MOTION TO BAR DAMAGES, ALTERNATIVELY,
DEFENDANTS' FIFTH MOTION TO COMPEL DISCOVERY**

NOW COMES Plaintiff, CHRISTIAN DAIGRE, by and through one of his
attorneys, Laura L. Scarry of DeANO & SCARRY, LLC, and respectfully moves this

Honorable Court to strike arguments made for the first time in Defendants' reply in support of their Motion to Bar Damages, or in the alternative, Defendants' Fifth Motion to Compel Discovery. Alternatively, Plaintiff requests leave to file a sur-response to Defendants' reply in support of their Motion to Bar Damages, or in the alternative, Defendants' Fifth Motion to Compel Discovery. In support thereof, Plaintiff states as follows:

1. On October 7, 2016, Defendants filed a "Motion to Bar Damages, Alternatively, Defendants' Fifth Motion to Compel." (See, Docket 193).
2. Per the Court's October 13, 2016 order (see Docket 197), Plaintiff filed his response on November 11, 2016. (See, Docket 209).
3. Per the Court's October 13, 2016 order, Defendants filed their reply on November 21, 2016. (See, Docket 215).
4. Defendants made new arguments in their reply brief that they had not presented in their original motion. Additionally, Defendants attached documents to their reply brief that had not been previously disclosed in discovery.
5. The Court should not entertain Defendants new arguments or rely on new evidence presented in their response. "It is well-settled that new arguments cannot be made for the first time in reply." *Gold v. Wolpert*, 876 F.2d 1327, 1331 n.6 (7th Cir. 1989). The policy behind such a rule is simple, "[r]epley briefs are for replying, not for raising new arguments or arguments that could have been advanced in the opening brief." *Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc.*, 249 F.R.D. 530, 536 (N.D. Ill. 2008). This rule

also serves to "prevent the nonmoving party from being sandbagged." *Reis v. Robbins*, 2015 U.S. Dist. LEXIS 23207, 2015 WL 846526, at *2 (S.D. Ind. Feb. 26, 2015).

6. As such, this Court should grant Plaintiff's motion to strike those arguments and attached documents including the following:
 - a. Argument in section A.I. and corresponding new evidence/documents;
 - b. Argument in section A.III.a.-c. and corresponding new evidence/documents;
 - c. Argument in section B. and corresponding new evidence/documents;
 - d. Argument in section C. and corresponding new evidence/documents;
 - e. Argument in section D. that relies on arguments and corresponding new evidence/documents made in the previous sections described above.
7. Should this Court deny Plaintiff's motion to strike, Plaintiff then requests leave to file a sur-response to Plaintiff's Motion to Bar Damages, Alternatively, Defendants' Fifth Motion to Compel.

WHEREFORE, for all the forgoing reasons, Plaintiff, CHRISTIAN DAIGRE, requests that this Honorable Court grant his motion to strike arguments and corresponding new evidence/documents in the following sections of Defendants' reply brief: A.I.; A.III.a.-c.; B., C. and D that relies on arguments and corresponding new evidence/documents made in the previous sections, or in the alternative, grant him leave to file a sur-response to Defendants' Reply in Support of their Motion to Bar Damages,

Alternatively, Defendants' Fifth Motion to Compel Discovery, and grant him any further relief deemed appropriate.

Respectfully submitted,

CHRISTIAN DAIGRE

s/Laura L. Scarry

By: Laura L. Scarry,
One of Plaintiff's Attorneys

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